it simply permits USDA to transfer up to $2 million to this program if the Secretary determines that such transfer is a good idea. We assume they will fully consult with the appropriate members of the Appropriations Committees to assure that this is done in a manner that is satisfactory to them.

It is important to us that this consultation take place.

The WIC Farmers' Market Program provides vouchers to low-income families who are on the WIC program. They can use the vouchers to buy fresh fruits and vegetables or other farm products at farmers' markets. The authorizing law, passed without objection in the Senate, mandates that States contribute a significant share of the cost of the program. It thus leverages Federal money with State and local funding to provide farm products to children and their parents on the WIC program.

This program has been an incentive in my home State of Vermont for farmers to work together and set up additional farmers' markets. This has been good for local communities, for the farmers selling their products and for families on the WIC program.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2155

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORITY TO TRANSFER FUNDS TO FARMERS' MARKET NUTRITION PROGRAM.

For fiscal year 1997, the Secretary of Agriculture may transfer after consultation with the appropriations committees of the House of Representatives and the Senate, from any funds available to the Secretary, up to $2,000,000 to the farmers' market nutrition program under section 17(m) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)). Amounts authorized to be transferred under the preceding sentence shall be in addition to any amounts authorized to be made available to the program under title IV of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1997 (110 Stat. 1590).

Mr. MCCONNELL. Mr. President, today along with my colleague Senator LEAHY, we are introducing legislation that will permit the Secretary of Agriculture authority to transfer funds to the WIC Farmers' Market Nutrition Program.

The WIC Farmers' Market Nutrition Program [FMNP] has become a very successful program in assisting low-income families, farmers, and local economies.

A total of 28 States and three Indian tribal organizations now participate in the FMNP. Because of the limitation on funding, several States, including Kentucky, have been restricted in the size of the program that they can offer. Several States would like the opportunity to expand this program based on their experience and feedback from farmers that participate.

For a State to have a FMNP requires the filing of an application in the fall with USDA, a commitment that the State will match 30 percent of the total Federal funds with either cash or in-kind services and support.

The benefits of FMNP are significant. WIC participants enhance the nutrition in their diet from of fresh fruits and vegetables. In fiscal year 1995 the FMNP served nearly 1 million low-income mothers and children participating in the WIC program. As a result of the FMNP: 71 percent of the WIC participants ate more fresh fruits and vegetables; 40 percent tried fruits and vegetables they had never eaten before; 48 percent spent cash and/or food stamps in addition to their FNMP coupons; 66 percent plan to continue shopping at farmers markets and; 72 percent plan to eat more fresh fruits and vegetables year round.

Farmers' incomes will increase because of the new market for their products. A survey of participants in 1995 revealed that: 84 percent of farmers increased their sales; 23 percent increased their fruit and vegetable production; 36 percent grew additional types of fruits and vegetables and; 37 percent said they would increase their production in 1996.

The Kentucky Farm Bureau has initiated a new program to boost sales of Kentucky farm products involving 25 roadside farm markets. Studies confirm that consumers prefer to buy locally-grown produce.

This is another example of organizations and State agencies working together to provide a service to consumers, it introduces fresh fruit and vegetables that are locally grown, and it enhances farmer income.

Mr. President, this is a good bill that benefits everyone and I hope we are able to pass this important legislation before we adjourn.

Mr. HARKIN. Mr. President, this legislation providing transfer authority to the Secretary of Agriculture is designed to help address the wide gap that exists between the need within the WIC Farmers' Market Nutrition Program and the level of resources that we have been able to appropriate for it. I welcome this opportunity to join as an original cosponsor of this bill.

The WIC Farmers' Market Nutrition Program has been an immensely popular and successful initiative, benefiting both farmers and WIC recipients. In fiscal 1995, nearly 1 million low-income mothers and children received benefits allowing them to purchase fresh, nutritious unprepared foods at 1,143 qualifying farmers' markets that were supplied by over 8,000 farmers. Currently, 27 States, including my State of Iowa, along with the District of Columbia and three American Indian tribal organizations, participate in the WIC Farmers' Market Nutrition Program. To take part, States must agree to provide at least 30 percent of the total cost of the program through State, local, or private funds.

The nutritional benefits of the WIC Farmers' Market Nutrition Program are excellent. The 1995 survey showed that among WIC participants receiving farmers' market benefits, 71 percent ate more fresh fruits and vegetables, 40 percent tried fruits and vegetables they had never eaten before, 48 percent spent cash or food stamps in addition to their WIC farmers' Market coupons or checks, 66 percent planned to continue shopping at farmers' markets, and 72 percent planned to eat more fresh fruits and vegetables year round.

The benefits to farmers are also substantial. Over $9 million was earned in 1995 by the more than 8,000 participating farmers. The 1995 survey also showed that 84 percent of participating farmers increased their sales, 23 percent increased their fruit and vegetable production, 36 percent grew additional types of fruits and vegetables, and 37 percent planned to increase their production in 1996.

In my State of Iowa the WIC Farmers' Market Nutrition Program has been very popular and successful. There is a great deal of interest in expanding the number of WIC recipients and farmers' markets that may take part, but the limited available Federal funding has prevented expansion. This situation also exists in the other States now in the program. Of any additional Federal funding provided for the Farmers' Market Nutrition Program, 75 percent would go to States that currently participate in it, with 25 percent to be used for adding new States.

Unfortunately, the lack of needed Federal funding has prevented a number of States from joining the WIC Farmers' Market Nutrition Program. Thirteen other States, along with other American Indian tribal organizations, have expressed interest in offering the program.

This legislation would allow, but not require, the Secretary of Agriculture to transfer funds within the Department of Agriculture budget to provide up to $2 million in additional funding for the WIC Farmers' Market Nutrition Program, where it could be put to very good use in expanding the number of WIC recipients, farmers, and farmers' markets participating in this outstanding program.

I urge my colleagues to support this important bill.

By Mr. STEVENS:

S. 2156. A bill to protect the rights of the States and the people from abuse by the Federal Government; to strengthen the partnership and the intergovernmental relationship between State and Federal Governments; to restrain Federal agencies from exceeding their authority; to enforce the 10th amendment to the Constitution; and for other purposes; to the Committee on Governmental Affairs.

THE TENTH AMENDMENT ENFORCEMENT ACT OF 1996

Mr. STEVENS. Mr. President, the 10th amendment was a promise to the

States and to the American people that the Federal Government would be limited, and that the people of the States could, for the most part, govern themselves as they saw fit.

Unfortunately, in the last half century, that promise has been broken. The American people have asked us to start honoring that promise again: to return power to State and local governments which are closer to and more sensitive to the needs of the people.

The 104th Congress and in particular, the Unfunded Mandates Reform Act, started to shift power out of Washington by returning it to our States and to the American people. As chairman of the Governmental Affairs Committee, I wanted to continue its shift of power. More than a dozen colleagues and I introduced S. 1629 on March 20 of this year. Within 5 months of its introduction, the bill had 32 cosponsors. On May 8 of this year, a House companion bill was also introduced.

I want to introduce a bill today which is the product of work by the Governmental Affairs Committee over the past several months. Unfortunately, the session is ending before we can complete action. However, before adjourning I wanted to provide a summary of the committee's consideration of this issue, and put forward a bill that reflects revisions made as a result of our hearings and discussions with interested parties. The legislation that I offer today is a starting point for when we reconvene next year. This is an important issue and I intend to pursue it in the next Congress.

The purpose of out legislation is to return power to the States and to our people by placing safeguards in the legislative process, by restricting the power of Federal agencies and by instructing the Federal courts to enforce the 10th amendment.

This would be accomplished in five ways. The act includes a specific congressional finding that the 10th amendment means what it says: The Federal Government has no powers not delegated by the Constitution, and the States may exercise all powers not withheld by the Constitution.

The act states that Federal laws may not interfere with State or local powers unless Congress declares its intent to do so and Congress cites its specific Constitutional authority to do so.

The act gives Members of the House and Senate the ability to raise a point of order challenging a bill that lacks such a declaration or that cites insufficient constitutional authority.

The act requires that Federal agency rules and regulations not interfere with State or local powers without Constitutional authority cited by Congress. Agencies must allow States notice an opportunity to be heard in the rulemaking process.

The act, further, directs courts to strictly construe Federal laws and regulations that interfere with State powers, with a presumption in favor of State authority and against Federal preemption.

During the course of the past year, we received bipartisan expressions of support from many Governors and State attorneys general, State legislatures, groups including the National Conference of State Legislatures [NCSL] and the Council of State Governments [CSG].

As the Supreme Court stated in 1991 when Justice Sandra Day O'Connor delivered the majority opinion of the court in the case Gregory versus Aschroft:

> If Congress intends to alter the usual constitutional balance between the states and the Federal Government, it must make its intention to do so unmistakably clear in the language of the statute. Congress should make its intention clear and manifest if it intends to preempt the historic powers of the States. In traditionally sensitive areas such as legislation affecting the federal balance, the requirement of clear statement assures that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision.

The Tenth Amendment Enforcement Act that I have introduced will prevent overstepping by all three branches of the Federal Government, and will focus attention on what State and local officials have been advocating for so long: the need to return the power of our democracy to the States and to our people.

The Governmental Affairs Committee held three hearings on the Tenth Amendment Enforcement Act:

March 21, 1996, featured Senators Dole, HATCH, and NICKLES. Attorneys general from Virginia and South Carolina, the solicitor general of Colorado, and elected representatives from Alaska, Ohio, and New York appeared, as well as Professors Nelson Lund and John Kincaid. Senator Dole said:

> I don't care what your party is. This isn't a Republican or a Democratic issue. Even the President has said ''The era of big government is over.'' . . . This is a bipartisan issue and this is a bipartisan bill.

June 3, 1996 in Nashville, TN, cochaired by Senator THOMPSON, included elected representatives for Tennessee State and local governments, as well as the director of the Tennessee Advisory Council on Intergovernmental Relations and the deputy director of the Tennessee Division of Water Supply. This hearing enlightened us to the wisdom that resides in Tennessee. State legislators, mayors, and administrators know how to solve most problems, but Federal overreaching often prevents them from doing that. One of our witnesses offered an update on a familiar saying in Washington. To this Tennessean, it's not just all politics that are local, ''All solutions are local.''

July 16, 1996, testimony was presented by NCSL President-Elect Michael Box and constitutional lawyer Roger Marzulla speaking in favor of the bill, while Professors Mary Brigid McManamon and Ed Rubin spoke in opposition. Mr. Marzulla pointed out that Congress is the only branch of the Federal Government that does not analyze the source of its power before it acts. Courts and Federal agencies both do. We in Congress can do our jobs better by looking at our constitutional jurisdiction and authority first, then exercising or power appropriately to solve the Nation's problems.

Let me conclude by saving, as a result of our work throughout this year and with input form the National Conference of State Legislatives, we have made the following changes to the Tenth Amendment Enforcement Act.

We have removed the supermajority requirement on the point of order. It would take a simple majority to remove the point of order, not just a supermajority.

It will require the Congressional Research Service to report on Federal preemption at the close of each Congress. It will exempt participation by State officials in agency rulemaking from the Federal Advisory Committee Act and allow State and Federal officials to work together on preemption issues without following the Federal Advisory Committee Act's detailed notice and reporting procedures. It would make funds received by States under Federal law subject to appropriation by the State legislatures.

I ask unanimous consent, Mr. President, the text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2156

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be referred to as the ''Tenth Amendment Enforcement Act of 1996''.

SEC. 2. FINDINGS.

The Congress finds that—

(1) in most areas of governmental concern, State governments possess both the Constitutional authority and the competence to discern the needs and the desires of the People and to govern accordingly;

(2) Federal laws and agency regulations, which have interfered with State powers in areas of State jurisdiction, should be restricted to powers delegated to the Federal Government by the Constitution;

(3) the framers of the Constitution intended to bestow upon the Federal Government only limited authority over the States and the people;

(4) under the Tenth Amendment to the Constitution, the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people; and

(5) the courts, which have in general construed the Tenth Amendment not to restrain the Federal Government's power to act in areas of State jurisdiction, should be directed to strictly construe Federal laws and regulations which interfere with State powers with a presumption in favor of State authority and against Federal preemption.

SEC. 3. CONGRESSIONAL DECLARATION.

(a) IN GENERAL.—On or after January 1, 1997, any statute enacted by Congress shall include a declaration—

(1) that authority to govern in the area addressed by the statute is delegated to Congress by the Constitution, including a citation to the specific Constitutional authority relied upon;

(2) if the statute interferes with State powers or preempts any State or local government law, regulation or ordinance, that Congress specifically finds that the Federal Government is the better level of government to govern in the area addressed by the statute; and

(3) if the statute interferes with State powers or preempts any State or local government law, regulation or ordinance, that Congress specifically intends to interfere with State powers or preempt State or local government law, regulation, or ordinance, and that such preemption is necessary.

(b) FACTUAL FINDINGS.—The Congress shall make specific factual findings in support of the declarations described in this section.

SEC. 4. POINT OF ORDER.

(a) IN GENERAL.—It shall not be in order in either the Senate or House of Representatives to consider any bill, joint resolution, or amendment that does not include a declaration of Congressional intent as required under section 3.

(b) RULEMAKING.—This section is enacted—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, and as such, it is deemed a part of the rules of the Senate and House of Representatives, but is applicable only with respect to the matters described in section 3 and supersedes other rules of the Senate or House of Representatives only to the extent that such sections are inconsistent with such rules; and

(2) with full recognition of the constitutional right of the Senate or House of Representatives to change such rules at any time, in the same manner as in the case of any rule of the Senate or House of Representatives.

SEC. 5. ANNUAL REPORT ON STATUTORY PREEMPTION.

(a) REPORT.—Within 90 days after each Congress adjourns sine die, the Congressional Research Service shall prepare and make available to the public a report on the extent of Federal statutory preemption of State and local government powers enacted into law during the preceding Congress or adopted through judicial interpretation of Federal statutes.

(b) CONTENTS.—The report shall contain—

(1) a cumulative list of the Federal statutes preempting, in whole or in part, State and local government powers;

(2) a summary of Federal legislation enacted during the previous Congress preempting, in whole or in part, State and local government powers;

(3) an overview of recent court cases addressing Federal preemption issues; and

(4) other information the Director of the Congressional Research Service determines appropriate.

(c) TRANSMITTAL.—Copies of the report shall be sent to the President and the chairman of the appropriate committees in the Senate and House of Representatives.

SEC. 6. EXECUTIVE PREEMPTION OF STATE LAW.

(a) IN GENERAL.—Chapter 5 of title 5, United States Code, is amended by inserting after section 559 the following new section:

''SEC. 560. PREEMPTION OF STATE LAW.

''(a) No executive department or agency or independent agency shall construe any statutory authorization to issue regulations as authorizing preemption of State law or local ordinance by rulemaking or other agency action unless—

''(1) the statute expressly authorizes issuance of preemptive regulations; and

''(2) the executive department, agency or independent agency concludes that the exercise of State power directly conflicts with the exercise of Federal power under the Federal statute, such that the State statutes and the Federal rule promulgated under the Federal statute cannot be reconciled or consistently stand together.

''(b) Any regulatory preemption of State law shall be narrowly tailored to achieve the objectives of the statute pursuant to which the regulations are promulgated and shall explicitly describe the scope of preemption.

''(c)(1) When an executive department or agency or independent agency proposes to act through rulemaking or other agency action to preempt State law, the department or agency shall provide all affected States notice and an opportunity for meaningful and timely input by duly elected or appointed State and local government officials or their designated representatives in the proceedings.

''(2) The notice of proposed rulemaking shall be forwarded to the Governor, the Attorney General and the presiding officer of each chamber of the legislature of each State setting forth the extent and purpose of the preemption.

''(3) In the table of contents of each Federal Register, there shall be a separate list of preemptive regulations contained within that Register.

''(4) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to participation in rulemaking or other agency action by duly elected or appointed State and local government officials or their designated representatives acting in their official capacities.

''(d) Unless a final executive department or agency or independent agency rule or regulation contains an explicit provision declaring the Federal Government's intent to preempt State or local government powers and an explicit description of the extent and purpose of that preemption, the rule or regulation shall not be construed to preempt any State or local government law, ordinance or regulation.

''(e)(1) Each executive department or agency or independent agency shall review the rules and regulations issued by the department or agency that preempt, in whole or in part, State or local government powers. Each executive department or agency or independent agency shall publish in the Federal Register a plan for such review. Such plan may be amended by the department or agency at any time by publishing a revision in the Federal Register.

''(2) The purpose of the review under paragraph (1) shall be to determine whether and to what extent such rules are to continue without change, consistent with the stated objectives of the applicable statutes, or are to be altered or repealed to minimize the effect of the rules on State or local government powers.

''(3) The plan under paragraph (1) shall provide for the review of all such department or agency rules and regulations within 10 years after the date of publication of such rules and regulations as final rules. For rules and regulations in effect more than 10 years on the effective date of this section, the plan shall provide for review within 3 years after such effective date.

''(f) Any Federal rule or regulation promulgated after January 1, 1997, that is promulgated in a manner inconsistent with this section shall not be binding on any State or local government, and shall not preempt any State or local government law, ordinance, or regulation.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 5, United States Code, is amended by adding after the item for section 559 the following:

''560. Preemption of State law.''.

SEC. 7. CONSTRUCTION.

(a) IN GENERAL.—No statute, or rule promulgated under such statute, enacted after the date of enactment of this Act, shall be construed by courts or other adjudicative entities to preempt, in whole or in part, any State or local government law, ordinance or regulation unless the statute, or rule promulgated under such statute, contains an explicit declaration of intent to preempt, or unless there is a direct conflict between such statute and a State or local government law, ordinance, or regulation, such that the two cannot be reconciled or consistently stand together.

(b) CONSTRUCTION IN FAVOR OF STATES AND PEOPLE.—Notwithstanding any other provisions of law, any ambiguities in this Act, or in any other law of the United States, shall be construed in favor of preserving the authority of the States and the people.

(c) SEVERABILITY.—If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the Act and the application of such provision to other persons and circumstances shall not be affected thereby.

SEC. 8. APPROPRIATION BY STATE LEGISLATURES.

Any funds received by a State under Federal law shall be subject to appropriation by the State legislature, consistent with the terms and conditions required under such applicable provisions of law.

By Mr. SMITH:

S. 2157. A bill to amend the Solid Waste Disposal Act to provide for the efficient collection and recycling of spent lead-acid batteries and educate the public concerning the collection and recycling of such batteries, and for other purposes; to the Committee on Environment and Public Works.

THE LEAD ACID BATTERY RECYCLING ACT

Mr. SMITH. Mr. President, I introduce lead-acid battery recycling legislation. This legislation, entitled the ''Lead-Acid Battery Recycling Act,'' is intended to strengthen and make uniform the existing lead-acid battery recycling infrastructure by establishing a mandatory recycling program for lead-acid batteries.

This legislation would prohibit the incineration and landfill disposal of used lead-acid batteries and require that these batteries be managed through a reverse distribution system. Under this legislation, used lead-acid batteries would have to be delivered in reverse order to battery retailers, wholesalers, manufacturers, recycling facilities or automotive dismantlers and ultimately to secondary smelters for recycling.

There is little doubt that lead-acid batteries are an extremely useful product. They are used in a variety of applications ranging from lighting and ignition systems for automobiles, power sources for electric vehicles, emergency lighting, and standby telecommunication systems. The lead contained in these batteries is, however, a cause for concern. Furthermore, given the fact that lead-acid batteries account for approximately 80 percent of all the lead consumed in the United States, they merit special attention.

This special attention has resulted in implementation of aggressive lead-acid battery recycling programs by many State and local governments as well as